

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 2.2-3106, 2.2-3107 and 2.2-3108 of the Code of Virginia,  
2 relating to the State and Local Government Conflict of Interests Act; prohibited  
3 contracts.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 2.2-3106, 2.2-3107 and 2.2-3108 of the Code of Virginia are amended as**  
6 **follows:**

7 § 2.2-3106. Prohibited contracts by officers and employees of state government and  
8 Eastern Virginia Medical School.

9 A. No officer or employee of any governmental agency of state government or Eastern  
10 Virginia Medical School shall have a personal interest in a contract, including an interim or  
11 comprehensive agreement as defined in § 56-557 or 56-575.1, with the governmental agency  
12 of which he is an officer or employee, other than his own contract of employment.

13 B. No officer or employee of any governmental agency of state government or Eastern  
14 Virginia Medical School shall have a personal interest in a contract with any other  
15 governmental agency of state government unless such contract is (i) awarded as a result of  
16 competitive sealed bidding or competitive negotiation as defined in § 2.2-4301 or (ii) is  
17 awarded after a finding, in writing, by the administrative head of the governmental agency that  
18 competitive bidding or negotiation is contrary to the best interest of the public.

19 C. The provisions of this section shall not apply to:

20 1. An employee's personal interest in additional contracts of employment with his own  
21 governmental agency that accrue to him because of a member of his immediate family,  
22 provided the employee does not exercise any control over the employment or the employment  
23 activities of the member of his immediate family and the employee is not in a position to  
24 influence those activities;

2. The personal interest of an officer or employee of a state institution of higher education or the Eastern Virginia Medical School in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution or the Eastern Virginia Medical School, (ii) the governing board of the educational institution finds that it is in the best interests of the institution or the Eastern Virginia Medical School and the Commonwealth for such dual employment to exist, and (iii) after such finding, the governing board of the educational institution or the Eastern Virginia Medical School ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;

3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;

4. Contracts for the sale by a governmental agency or the Eastern Virginia Medical School of services or goods at uniform prices available to the general public;

5. An employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;

6. Subject to approval by the board of visitors, an employee's personal interest in a contract between the Eastern Virginia Medical School or a public institution of higher education in Virginia that operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a clinical practice within such public institution of higher education or the Eastern Virginia Medical School and of which such employee is a member or employee;

7. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in Virginia or the Eastern Virginia Medical

School and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education or the Eastern Virginia Medical School prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its board of visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth; or

8. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the personal interest has been disclosed to the institution or the Eastern Virginia Medical School prior to the time the contract is entered into; (ii) the employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before January 15; (iii) the employee does not participate in the institution's or the Eastern Virginia Medical School's decision to contract; (iv) the president of the institution or the Eastern Virginia Medical School finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related medical education or research, by the institution's medical center or the

79 Eastern Virginia Medical School, its affiliated teaching hospitals and other organizations  
80 necessary for the fulfillment of its mission, including the acquisition of drugs, therapies and  
81 medical technologies; and (v) no later than December 31 of each year, the institution or the  
82 Eastern Virginia Medical School files an annual report with the Secretary of the  
83 Commonwealth disclosing each open contract entered subject to this provision, the names of  
84 the parties to each contract, the date each contract was executed and its term, the subject of  
85 each contractual arrangement, the nature of the conflict of interest, the institution's or the  
86 Eastern Virginia Medical School's employee responsible for administering each contract, the  
87 details of the institution's or the Eastern Virginia Medical School's commitment or investment of  
88 resources or finances for each contract, and any other information requested by the Secretary  
89 of the Commonwealth.

90 D. Notwithstanding the provisions of subdivisions C 7 and C 8, if the research and  
91 development or commercialization of intellectual property or the employee's personal interest  
92 in a contract with a business is subject to policies and regulations governing conflicts of  
93 interest promulgated by any agency of the United States government, including the adoption of  
94 policies requiring the disclosure and management of such conflicts of interests, the policies  
95 established by the Eastern Virginia Medical School pursuant to such federal requirements shall  
96 constitute compliance with subdivisions C 7 and C 8, upon notification by the Eastern Virginia  
97 Medical School to the Secretary of the Commonwealth by January 31 of each year of evidence  
98 of their compliance with such federal policies and regulations.

99 E. The board of visitors may delegate the authority granted under subdivision C 7 to the  
100 president of the institution. If the board elects to delegate such authority, the board shall  
101 include this delegation of authority in the formal policy required by clause (iii) of subdivision C  
102 7. In those instances where the board has delegated such authority, on or before December 1  
103 of each year, the president of the relevant institution shall file a report with the relevant board  
104 of visitors disclosing each open contract entered into subject to this provision, the names of the  
105 parties to each contract, the date each contract was executed and its term, the subject of each

contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the board of visitors.

§ 2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and town councils.

A. No person elected or appointed as a member of the governing body of a county, city or town shall have a personal interest in (i) any contract with his governing body, or (ii) any contract with any governmental agency that is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member, or (iii) any contract other than a contract of employment with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency. For purposes of this subsection, the term "contract" includes any interim or comprehensive agreement as defined in § 56-557 or 56-575.1.

B. In addition, no person elected or appointed as a member of the governing body of a county, city or town shall have a personal interest in an interim agreement or comprehensive agreement as defined § 56-557 or 56-575.1 with any governmental agency in the same jurisdiction where members of the second governmental agency are elected.

~~B-C.~~ The provisions of this section shall not apply to:

1. A member's personal interest in a contract of employment provided (i) the officer or employee was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of the former Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 as it existed on June 30, 1983, or (ii) the employment first began prior to the member becoming a member of the governing body;

2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; ~~or~~

133 3. A contract awarded to a member of a governing body as a result of competitive  
134 sealed bidding where the governing body has established a need for the same or substantially  
135 similar goods through purchases prior to the election or appointment of the member to serve  
136 on the governing body. However, the member shall have no involvement in the preparation of  
137 the specifications for such contract, and the remaining members of the governing body, by  
138 written resolution, shall state that it is in the public interest for the member to bid on such  
139 contract; or

140 4. A member's personal interest in an interim or comprehensive agreement as defined  
141 in § 56-557 or 56-575.1 when the remaining members of the governing body, by written  
142 resolution, state that the agreement is in the public interest and there is only one source  
143 practicably available.

144 § 2.2-3108. Prohibited contracts by members of school boards.

145 A. No person elected or appointed as a member of a local school board shall have a  
146 personal interest in (i) any contract, including an interim or comprehensive agreement as  
147 defined in § 56-557 or 56-575.1, with his school board or (ii) any contract with any  
148 governmental agency that is subject to the ultimate control of the school board of which he is a  
149 member.

150 B. The provisions of this section shall not apply to:

151 1. A member's personal interest in a contract of employment provided the employment  
152 first began prior to the member becoming a member of the school board;

153 2. Contracts for the sale by a governmental agency of services or goods at uniform  
154 prices available to the public; ~~or~~

155 3. A contract awarded to a member of a school board as a result of competitive sealed  
156 bidding where the school board has established a need for the same or substantially similar  
157 goods through purchases prior to the election or appointment of the member to serve on the  
158 school board. However, the member shall have no involvement in the preparation of the

specifications for such contract, and the remaining members of the school board, by written resolution, shall state that it is in the public interest for the member to bid on such contract; or  
4. A member's personal interest in an interim or comprehensive agreement as defined in § 56-557 or 56-575.1 when the remaining members of the school board, by written resolution, state that the agreement is in the public interest and there is only one source practicably available.

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